



Virginia State Water Control Board Meeting September 24, 2020

Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) Amendments as a Result of 2020 General Assembly Actions

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Why are we amending the VSMP Regulations?

- The 2020 General Assembly passed:
 - House Bill 859 (Chapter 313 of the 2020 Acts of Assembly) directs the State Water Control Board (Board) to adopt regulations that require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property.
 - House Bill 882 (Chapter 667 of the 2020 Acts of Assembly) directs the Board to adopt regulations that provide for the use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness. In addition, the regulations shall provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution.

Why are we amending the VSMP Regulations? (Cont.)

- The 2020 General Assembly also passed:
 - Senate Bill 747 and House Bill 1609 (Chapters 1102 & 1103 of the 2020 Acts of Assembly) established that any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § [62.1-44.19:14](#) and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § [62.1-44.19:21](#), permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department of Environmental Quality (Department), (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.

Changes in 9VAC25-870

- **9VAC25-870-10. Definitions.**
 - Added clarifying language to the definition of “best management practice”.
- **9VAC25-870-65 B. Water Quality Compliance.**
 - Clarification of the concept of “nonproprietary” BMPs.
- **9VAC25-870-65 C. Water Quality Compliance - BMPs.**
 - Added clarifying language to the definition of “best management practice”.
- **9VAC25-870-65 D. Water Quality Compliance VSMP Limitations.**
 - Clarification of the concept of “nonproprietary” BMPs and addressing of “existing” proprietary BMPs.

Changes in 9VAC25-870 (Cont.)

- **9VAC25-210-870-65 E, F, & G. Water Quality Compliance – VSMP Limitations/Discretion & Alternatives**
 - Revision of text and numbering to reflect addition of new subsection.
- **9VAC25-870-65 H.**
 - New subsection added to clarify the retirement of wasteload allocations.
- **9VAC25-870-112 C.**
 - New subsection added to clarify the recording of long-term maintenance and inspection requirements.

Process

- **Final Exempt Process**

- The Administrative Process Act allows for an expedited adoption process if certain criteria are met.
- § 2.2-4006 A 4 (a): A regulation may be exempt from full process if it is “necessary to conform to changes in Virginia Statutory law or the appropriation act where no agency discretion is involved.”

End of Staff Presentation

- Are there any questions?

- The staff recommends:

Staff Recommended Action

The Board adopt the proposed amendments to the VSMP regulations, authorize their publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.